IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5444 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BAIRAJBA BACHUBHA GOHIL - Petitioner(s)

Versus

DY.COLLECTOR-BHAVNAGAR. & 2 - Respondent(s)

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Appearance :

MR PRASHANT MANKAD for Petitioner(s) : 1,MR JAGDISH H MEHTA for Petitioner(s) : 1,
MS ARCHANA RAVAL AGP for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/02/2006

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner who claims to be a tenant of the premises in question, has challenged the legality and validity of the order passed by the Deputy Collector, Bhavnagar dated 8.2.2005 passed in Electricity Case No.11 of 2003 passed under Section-23-A of the Bombay Rent, Hotel and Lodging House Rates Control Act (57 of 1947) (hereinafter referred as the “Bombay Rent Act” for short) rejecting the application submitted by the petitioner for electricity connection.

2. Shri Mehta, learned advocate appearing on behalf of the petitioner has submitted that the petitioner is the tenant of the premises in question which is owned by the respondent No.2 and 3 and they are landlord. As the landlords objected to granting of electricity supply connection, the petitioner has

approached the Deputy Collector, Bhavnagar under Section-23-A of the Bombay Rent Act. It is also further submitted by him that as the respondent Nos.2 & 3 were trying to disturb possession of the petitioner, the petitioner had filed one Regular Civil Suit No.760 of 2003 in the court of learned Civil Judge (J.D.), Bhavnagar and has also submitted an application below Exh.5 for interim injunction and pursuant to the order passed by the learned Trial Court passed below Exh.5, possession of the petitioner is protected. He has also further submitted that the Deputy Collector has without holding any inquiry, much less, a summary inquiry as contemplated under Section-23-A of the Bombay Rent Act, has held that the petitioner is not tenant of the disputed property in question and therefore, it is requested to allow the present Special Civil Application. Shri Mehta, learned advocate has relied upon the judgment of the Division Bench of this Court in case of SAROJBEN AND OTHERS V. RAMJI MANDIR TRUST AND OTHERS reported in AIR 2005 (GUJ) 5, more particularly, para-6 of the said judgment in support of his submission that the Deputy Collector under

Section-23-A of the Act, is required to hold a summary inquiry to prima facie establish whether the petitioner is the tenant of the disputed property in question or not.

3. Per contra, Shri Mehul S. Shah, learned advocate appearing on behalf of the respondent has relied upon the judgment of the Division Bench of this Court in case of GADHAVI JITENDRA ISHWARDAS V. B.K.THAKKER AND OTHERS reported in 1994 (2) GLR 1053 has raised preliminary objection with regard to maintainability of the present Special Civil Application as according to him, revision application is maintainable before the District Court under Section-29(3) of the Act. He has also further submitted that on merits in fact, even the learned trial court in the order passed below Exh.5 which is relied upon by the petitioner has also observed that the petitioner has failed to produce any evidence that he is the tenant of the property in question. He has submitted that unless the petitioner is held to be tenant of the property in question, application under Section-23-A of the Act, is not maintainable and therefore,

it is rightly rejected by the Deputy Collector, Bhavnagar.

4. Heard the learned advocates for the parties.

5. It is true that as per the judgment of the Division Bench of this Court in case of GADHAVI JITENDRA ISHWARDAS V. B.K.THAKKER AND OTHERS reported in 1994 (2) GLR 1053, Revision Application under Section-29-(3) of the Bombay Rent Act is maintainable against the order passed by the Deputy Collector under Section-23-A of the Act, however, as the present Special Civil Application is already entertained and admitted and it is being heard finally, this Court has decided the present Special Civil Application on merits.

6. On going through the order passed by the Deputy Collector, Bhavnagar impugned in the present Special Civil Application, it appears that the Deputy Collector has without holding any inquiry much less a summary inquiry as contemplated under Section 23-A of the Act, has held that there is no relationship of

landlord and tenant between the respondent Nos.2 & 3 and the petitioner. As held by the Division Bench of this Court in case of SAROJBEN AND OTHERS V. RAMJI MANDIR TRUST AND OTHERS (Supra), Section-23-A of the Bombay Rent Act provides speedy and inexpensive remedy to the tenant to get electricity supply connection notwithstanding that the owner of the premises is not agreeable to such essential service being provided to the tenant. If on landlord's raising the dispute that the occupant of the premises is not a tenant, then, in that case, such an occupant and / or person is required to be instituted judicial proceedings for declaration that he is tenant and such proceedings would take years, if not decades, and this situation would frustrate the very object of insertion of Section-23-A in the Bombay Rent Act. Considering the above decision, it is clear that the Division Bench has held that considering the underline object of Section-23-A of the Bombay Rent Act, the Collector is not required to hold a detail inquiry and come to a conclusive finding that the applicant is tenant but the Collector is required to hold only summary inquiry for the purpose of giving

prima facie finding that the applicant is a tenant. Considering the judgment of this Court in case of CHAMAR RAMJIBHAI KHIMAJIBHAI V. MIRZA MURMAHMMADBHAI AMIRBHAI reported in 2000 (3) (GUJ) LR 2658, wherein it is observed that that for granting application under Section 23(A) of the Bombay Rent Act, what the Collector is to see that whether the applicant has satisfactorily established that he is the tenant, and that whether the applicant has prima facie established that he is the tenant. In view of the above, and considering the order passed by the Deputy Collector, Bhavnagar impugned in the present Special Civil Application , it appears that there is no inquiry held by the Deputy Collector, Bhavnagar to prima facie to consider whether the petitioner is a tenant of the disputed property in question or not. Under the circumstances, the impugned order passed by the Deputy Collector, Bhavnagar dated 8.2.2005 passed under Section-23-A of the Bombay Rent Act passed in Electricity Case No.11 of 2003 is required to be quashed and set aside and the matter is remanded to the Deputy Collector, Bhavnagar for passing the order afresh after holding summary inquiry as stated above.

7. For the reasons stated above, the petition succeeds. The impugned order passed by the Deputy Collector, Bhavnagar dated 8.2.2005 is hereby quashed and set aside the matter is remanded to the Deputy Collector, Bhavnagar for holding summary inquiry as stat5eed hereinabove and to consider whether prima facie the petitioner is the tenant of the disputed property or not. Such an exercise is to be done within a period of four months from the date of receipt of this order.

8. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

[M.R.Shah, J.]

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